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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 ROSE MARIE RENO and LARRY  
ANDERSON,

12 Plaintiffs,

13 v.

14 NATIONAL UNION FIRE  
15 INSURANCE COMPANY OF  
PITTSBURGH, PA; AIG CLAIMS,  
16 INC.; and DOES 1 through 10,

17 Defendants.

Case No. 15-CV-2179 AJB BGS

Hon. Anthony J. Battaglia  
Courtroom: 3B

**DEFENDANT AIG CLAIMS, INC.'S  
REPLY IN SUPPORT OF ITS  
MOTION TO DISMISS  
PLAINTIFFS' FIRST AMENDED  
COMPLAINT**

Date: August 25, 2016  
Time: 2:00 p.m.  
Crtrm.: 3B

Complaint Filed: August 27, 2015  
(San Diego Superior Court)

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs Marie Reno and Larry Anderson (collectively “Plaintiffs”) Opposition fails because, contrary to their arguments, the insurance contract is not “unclear” as to who is the insurer.<sup>1</sup> The Policy (which is attached as an exhibit to the FAC) specifically states that National Union is the insurer.<sup>2</sup> On at least *twenty-nine* separate occasions, the Policy expressly states that National Union is in the insurer of the Policy. Conversely, the claims administrator, AIG Claims, is not even mentioned in the Policy. Likewise, the relevant coverage letter (also attached to the FAC) unambiguously states that National Union is the insurer, while AIG Claims is the claims administrator for claims arising under the Policy. Plaintiffs’ conclusory allegations regarding the identity of the insurer contradict the clear and unambiguous language of the contract attached to the FAC and therefore fail as a matter of law. Accordingly, AIG Claims respectfully requests that Plaintiffs’ FAC be dismissed with prejudice as to AIG Claims.

**II. PLAINTIFFS’ CAUSES OF ACTION AGAINST AIG CLAIMS STILL FAIL AS A MATTER OF LAW.**

**A. The Policy And Coverage Letter Unambiguously And Expressly Identify National Union As The Insurer.**

In its Opposition, Plaintiffs contend that it is “unclear” whether AIG Claims might have acted as the insurer because “AIG [Claims] is identified throughout the

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<sup>1</sup> Tellingly, the FAC affirmatively alleges that National Union “issued a Directors & Officers insurance policy to Tri-City, identified as policy number 1-143-41-70.” The FAC does not, however, make the same allegation as to AIG Claims. Instead, the FAC alleges that it is “unclear” whether AIG Claims is the insurer and that AIG Claims is “doing business in the State of California ... by insuring persons in San Diego County and/or providing claims administration services. . . .” (FAC, ¶ 13.) This, in conjunction with the express language of the Policy, warrants dismissal with prejudice of Plaintiffs’ claims against AIG Claims.

<sup>2</sup> In its answer, National Union admitted it was the insurer of the Policy. (*See* National Union’s June 8, 2016, Answer, Dkt. #20, ¶12.)

1 policy, coverage analysis and other related documents.” (Opposition, pp. 3:10-11,  
2 3:19-20, 4:5-9.) This argument contradicts the plain language of these documents, all  
3 of which are attached to, and incorporated by reference into, the FAC.

4 First, the Policy clearly and unambiguously states that National Union is the  
5 insurer. Item 8 of the Policy’s declaration page *expressly identifies* National Union as  
6 the sole insurance company that issued the Policy:

7 NAME AND ADDRESS OF INSURER (hereinafter “Insurer”):  
8 (This Policy *is issued only* by the insurance company indicated below.)  
9 National Union Fire Insurance Company of Pittsburgh, Pa.  
10 175 Water Street  
New York, NY 10038-4969

11 (Exh. C to FAC, Dkt. #19-1, p. 24, emphasis added.) Further, in each of the *twenty-*  
12 *eight* separate endorsements, the Policy expressly identifies National Union as the  
13 insurer:

14 This endorsement, effective 12:01 a.m. July 1, 2013 forms a part of the  
15 policy number 01-143-41-70 issued to TRI-CITY HEALTHCARE  
16 DISTRICT DBA TRI-CITY MEDICAL CENTER by National Union Fire  
Insurance Company of Pittsburgh, Pa.

17 (Exh. C to FAC, Dkt. #19-1, pp. 43, 45-46, 48-55, 62-76, 79-80, 82, 84-85, 100-104,  
18 106-111.)

19 The Policy, by contrast, never identifies AIG Claims as Plaintiffs’ insurer.  
20 Indeed, AIG Claims is not mentioned anywhere in the Policy, either as an insurer, or  
21 otherwise. The only mention of “AIG” is AIG Property Casualty Inc. which is not AIG  
22 Claims, Inc.<sup>3</sup> (Exh. C to FAC, Dkt. #19-1, p. 19.)

23 \_\_\_\_\_  
24 <sup>3</sup> For this reason, the Court should reject Plaintiffs’ claim that it is reasonable that  
25 “Defendant AIG [Claims] consented to the contract at issue, the insurance policy.”  
26 (Opposition, p. 4:5-9) AIG Claims was not a party to the Policy, nor was it even  
27 mentioned in the Policy. Thus, AIG Claims could not have “consented” to the  
28 Policy. *See Golden Eagle Ins. Co. v. Foremost Ins. Co.*, 20 Cal. App. 4th 1372,  
1384 (1993) (“an insurance policy is a contract and, like all contracts, requires  
mutuality of assent”).

1 Second, the coverage letter specifically identifies AIG Claims as the claims  
2 administrator for the Policy, while identifying National Union as the insurer:

3 AIG Claims, Inc. (“AIG”) is the claims administrator handing claims  
4 arising under insurance policy number 01-143-41-70 issued to Tri-City  
5 Healthcare District d/b/a Tri-City Medical Center (“Tri-City”) by National  
6 Union Fire Insurance Company of Pittsburgh, Pa.

7 (Exh. B to FAC, Dkt. #19-1, p. 13.) The coverage letter further recognizes National  
8 Union as the insurer on multiple occasions:

- 9 • “National Union reserves the right to contend that Anderson and Reno are not  
10 Individual Insured under the Policy” (Exh. B to FAC, Dkt. #19-1, p. 15);
- 11 • “National Union reserves the right to withhold any portion of indemnity and/or  
12 defense costs subject to the above cited terms, conditions and exclusions” (Exh.  
13 B to FAC, Dkt. #19-1, p. 15);
- 14 • “The policy provides that National Union has the right to effectively associate in  
15 the defense and settlement of this claim” (Exh. B to FAC, Dkt. #19-1, p. 15);
- 16 • “National Union’s coverage position is based on the information presently  
17 available to us” (Exh. B to FAC, Dkt. #19-1, p. 16); and
- 18 • “National Union expressly reserves all of its rights under the Policy, at law or in  
19 equity, including the right to assert additional defenses to any claims for  
20 coverage, if subsequent information indicates that such action is warranted”  
21 (Exh. B to FAC, Dkt. #19-1, p. 16).

22 Third, Plaintiffs’ attempt to plead around the clear and unambiguous language of  
23 the Policy by alleging that “AIG Claims, Inc. was and is doing business in San Diego  
24 county by insuring persons,” should be rejected by the Court. (FAC, ¶ 13.) This  
25 generic allegation is not specific any particular policy or insured, and Plaintiffs cannot  
26 create a cause of action by contradicting the plain language of the Policy or the other  
27 documents incorporated by reference into the FAC with respect to the identity of the  
28 insurer that issued the Policy here (National Union). Where a “contract [is] attached to  
the complaint and incorporated into the complaint, the Court need not ‘accept as true

1 conclusory allegations in the complaint which are contradicted by the clear import of  
 2 the contract itself.’’ *ING Bank, FSB v. Mata* (D. Ariz., Dec. 3, 2009, No. CV-09-748-  
 3 PHX-GMS) 2009 WL 4672797, at \*6 (dismissing a cause of action where a complaint  
 4 attached the subject contract and “the contract’s plain language negates the unsupported  
 5 allegation”) citing to *Wylar Summit P’ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658,  
 6 665 (9th Cir. 1998).

7 Finally, Plaintiffs’ attempts to distinguish *Minnesota Mut. Life Ins. Co. v. Ensley*,  
 8 174 F.3d 977 (9th Cir. 1999) and *Gruenberg v. Aetna Ins. Co.*, 9 Cal. 3d 566, 576  
 9 (1973) are without merit. It makes no difference that *Minnesota Mutual* is a summary  
 10 judgment decision because the basis for summary judgment was that the insurance  
 11 agents “were not a party to the insurance contract.” *Id.* As can be seen from the  
 12 insurance policy attached to Plaintiffs’ FAC, AIG Claims is not a party to the insurance  
 13 contract that is at issue in this case. The fact that *Minnesota Mutual* involved an  
 14 insurance agent, rather than insurance adjuster, is also a distinction without a difference  
 15 because neither are parties to the insurance contract. *Gruenberg* (despite Plaintiffs’  
 16 protestations) is directly on point – the California Supreme Court expressly upheld a  
 17 **demurrer** to a good faith and fair dealing claim against an **insurance adjuster**, because  
 18 “the non-insurer defendants were not parties to the agreements for insurance; therefore,  
 19 they are not, as such, subject to an implied duty of good faith and fair dealing.”  
 20 *Gruenberg v. Aetna Ins. Co.*, 9 Cal. 3d 566, 576 (1973). Consequently, Plaintiffs’  
 21 causes of action against AIG Claims fail as a matter of law and should be dismissed.

22 **B. Plaintiffs Should Not Be Given Leave To Amend.**

23 For the reasons explained in detail above, Plaintiffs’ causes of action against AIG  
 24 Claims fail as a matter of law. Anticipating such a finding by the Court, Plaintiffs use  
 25 the final section of their Opposition to request an opportunity to amend their deficient  
 26 FAC. That request should be denied because Plaintiffs have not, and cannot, allege  
 27 additional facts without contradicting the clear and unambiguous language of the Policy  
 28 and coverage letter which expressly state that National Union is the insurer. *Bonin v.*

1 *Calderon*, 59 F.3d 815, 845 (9th Cir. 1995) (“Futility of amendment can, by itself,  
2 justify the denial of a motion for leave to amend”).

3 **III. CONCLUSION**

4 For the foregoing reasons, AIG Claims respectfully requests that Plaintiffs’ FAC  
5 be dismissed with prejudice as to AIG Claims.

6  
7 DATED: June 30, 2016

BAUTE CROCHETIERE & GILFORD LLP

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10 By: s/ Michael J. Hartley

11 Michael J. Hartley

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of June, 2016, I electronically filed the foregoing **DEFENDANT AIG CLAIMS, INC.'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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